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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,251	09/10/2007	Thomas Bretschneider	2400.0800000/JMC/CMB	7404

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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
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WASHINGTON, DC 20005

EXAMINER

HABTE, KAHSAI

ART UNIT	PAPER NUMBER
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1624

MAIL DATE	DELIVERY MODE
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02/01/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/594,251	Applicant(s) BRETSCHNEIDER ET AL.	
	Examiner Kahsay T. Habte	Art Unit 1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 27, 28, 30-33 and 35 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-7, 27-28, 30-33 and 35 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. Claims 1-7, 27-28, 30-33 and 35 are pending in this application.

Election/Restrictions

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-4 (in part), 6 (in part), 27-28 (in part), 30-33 (in part) and 35 (in part), drawn to CKE = 1,3-thiazine derivative i.e. formula (5).

Group II, claim(s) 1-4 (in part), 6 (in part), 27-28 (in part), 30-33 (in part) and 35 (in part), drawn to CKE = pyran derivative i.e. formula (4).

Group III, claim(s) 1-6 (in part), 27-28 (in part), 30-33 (in part) and 35 (in part), drawn to CKE = pyrrolidine derivative i.e. formula (1).

Group IV, claim(s) 1-6 (in part), 27-28 (in part), 30-33 (in part) and 35 (in part), drawn to CKE = furan/thiophene derivative i.e. formulae (2) and (3).

Group V, claim(s) 1-4 (in part) and 6 (in part), 27-28 (in part), 30-33 (in part) and 35 (in part), drawn to CKE = cyclohexane/cyclopentane derivative i.e. formulae (6) and (7).

Group VI, claim(s) 7 (in part), drawn to amides (i.e. Formula II).

Group VII, claim(s) 7 (in part), drawn to esters (i.e. Formulae III-IV).

Group VIII, claim(s) 7 (in part), drawn to acid halides (i.e. Formulae VI).

Group IX, claim(s) 7 (in part), drawn to ketones (i.e. Formula IX).

Group X, claim(s) 7 (in part), drawn to acids (i.e. Formula XXV).

Group XI, claim(s) 7 (in part), drawn to others that are not covered by Groups VI-X.

The inventions listed as Groups I-XI do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of Group I is a 1,3-thiazine ring (six-membered ring with N and S at 1,3-positions) that is not present in the special technical feature of Groups II-XI. The special technical feature of Group II is a pyran ring (six-membered ring with one oxygen) and this is not present in other groups. The special technical feature of Group III is a pyrrolidine ring (five-membered ring with one N) and this special technical feature is not present in the special technical feature of Groups I-II or Groups IV-XI. The special technical feature of Group IV is a furan or a thiophene ring (five-membered ring with one O or one S) and this is not present in the special technical feature of other groups. The special technical feature of Group V is a cyclohexane or a cyclopentane ring (no heteroatoms in the ring) and this special technical feature is not present in Groups I-IV or Groups VI-XI. The special technical features of Groups VI-X are different from the special technical features of Groups I-V, since they have no ring that is attached to the phenyl (no CKE present). The special technical feature of Groups VI-XI is different one from the other, since they are drawn to different chemical structures. For example, the special technical feature of Group VI is an amide derivative attached to the phenyl ring and is different from the special technical feature of other groups. Like wise, the special technical feature of Group VII is an ester derivative attached to a phenyl ring, the

special technical feature of Group VIII is acid halide derivatives, the special technical feature of Group IX is ketone derivatives and the special technical feature of Group X is acid derivatives. If applicants elected Group VI, VII, VIII, IX, X or XI; an election of single disclosed species is required.

A telephone call was made to Ms. Cynthia Bouchez on Jan. 28, 2010 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kahsay Habte whose telephone number is (571) 272-0667. The examiner can normally be reached on M-F (9.00AM- 5:30PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached at (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Art Unit: 1624

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Kahsay T. Habte/
Primary Examiner, Art Unit 1624

February 1, 2010